

A Pendakwa Raya lwn Prakash a/l Rajagopal dan satu lagi

B MAHKAMAH RAYUAN (PUTRAJAYA) — RAYUAN JENAYAH
NO J-09-53-02 TAHUN 2023
HADHARIAH SYED ISMAIL, HASHIM HAMZAH DAN AZMI
ARIFFIN HHMR
14 FEBRUARI 2024

C *Prosedur Jenayah — Semakan — Semakan Jenayah — Pertuduhan di bawah s 148 dibaca bersama-sama s 34 Kanun Keseksaan — Menyerang mangsa dengan kerusi plastic sehingga mendatangkan kecederaan luka kecil dan lebam — Pengakuan bersalah — Mahkamah majistret menjatuhkan hukuman denda RM2,100, jika gagal bayar tiga bulan penjara — Rayuan oleh pendakwaan terhadap keputusan mahkamah majistret — Kuasa semakan oleh Mahkamah Tinggi — Sabitan dan hukuman diakas dan digantikan dengan sabitan pertuduhan pindaan di bawah s 323 Kanun Keseksaan dan hukuman denda RM1,500, jika gagal bayar dua bulan penjara — Sama ada Mahkamah Tinggi boleh mengguna pakai kuasa semakan — Sama ada Mahkamah Tinggi boleh meminda sabitan dalam kes pengakuan bersalah dan menjatuhkan hukuman bawah pindaan tersebut*

F Responden pertama dan kedua bersama-sama dengan dua rakannya telah menyerang pengadu dengan menggunakan kerusi plastik yang berada di sebuah restoran. Akibat serangan tersebut, tiga orang mangsa telah mengalami kecederaan luka kecil dan lebam di bahagian badan dan tangan. Berikutan itu, responden pertama dan kedua telah ditangkap dan dituduh di mahkamah majistret di atas pertuduhan di bawah s 148 Kanun Keseksaan dibaca bersama-sama s 34 kanun yang sama. Kedua-dua responden mengaku salah, memahami sifat dan akibat pengakuan salah mereka. Setelah mendengar rayuan peringanan dan pemberatan hukuman oleh kedua-dua pihak, mahkamah majisteret telah menjatuhi hukuman denda RM2,100 jika ingkar bayar, tiga bulan penjara bagi setiap responden. Tidak berpuas hati, pihak pendakwaan telah merayu terhadap hukuman tersebut. Hakim Mahkamah **H** Tinggi, dengan menggunakan kuasa semakan, telah memerintahkan agar sabitan dan hukuman yang dijatuhkan ke atas kedua-dua responden diakaskan dan digantikan dengan sabitan di atas pertuduhan pindaan di bawah s 323 Kanun Keseksaan. Kedua-dua responden dikenakan hukuman denda setiap seorang RM1,500 jika gagal bayar dua bulan penjara. Terkilan, pihak **I** pendakwaan menfailkan notis rayuan terhadap di Mahkamah Rayuan di atas keseluruhan keputusan Mahkamah Tinggi tersebut. Namun begitu, notis rayuan terhadap responden pertama telah dibatalkan kerana kegagalan menyerahkan notis rayuan tersebut kepada responden pertama. Oleh itu, rayuan ini hanya terhadap responden kedua sahaja. Persoalan undang-undang

yang dibangkitkan dalam rayuan ini adalah: (a) sama ada kerusi plastik termasuk dalam definisi 'apa-apa senjata' bagi maksud kesalahan di bawah s 148 Kanun Keseksaan; (b) sama ada hakim Mahkamah Tinggi boleh menggunakan kuasa semakan di bawah s 323 Kanun Tatacara Jenayah untuk meminda sabitan dalam suatu kes pengakuan bersalah dan selanjutnya menjatuhkan hukuman di bawah pertuduhan yang dipinda tersebut.

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Diputuskan, membenarkan rayuan:

- (1) Walaupun sifat kerusi plastik pada hakikatnya bukanlah sejenis senjata, namun jika disalahgunakan ianya boleh mendatangkan kecederaan kepada sesiapa sahaja sepertimana yang berlaku di dalam kes ini di mana ketiga-tiga mangsa telah mengalami kecederaan luka dan lebam serta kesakitan pada tubuh badan mereka akibat daripada pukulan dengan kerusi plastik tersebut. Sehubungan dengan itu, tidak dapat disangkal bahawa kerusi plastik yang digunakan ini termasuk di dalam kategori 'senjata' bagi maksud kesalahan ini (lihat perenggan 22).
- (2) Mahkamah Tinggi mempunyai kuasa di peringkat pendengaran rayuan untuk mengakas sabitan dan hukuman bagi pertuduhan di bawah s 148 Kanun Keseksaan setelah berpuas hati bahawa fakta kes yang dikemukakan oleh perayu tidak memenuhi intipati pertuduhan. Biar pun begitu, di dalam melaksanakan kuasa semakannya, Hakim Mahkamah Tinggi tidak boleh meminda seksyen pertuduhan asal kepada seksyen pertuduhan yang baru seperti yang telah dilakukan oleh beliau, apatah lagi untuk merekodkan sabitan dan hukuman di atas pertuduhan pindaan tersebut. Ini adalah kerana s 325 Kanun Tatacara Jenayah tidak memperuntukkan kuasa kepada seseorang hakim atas penyemakan untuk berbuat demikian (lihat perenggan 28–29).
- (3) Setelah Hakim Mahkamah Tinggi mendapati bahawa elemen di bawah s 148 Kanun Keseksaan gagal dipenuhi oleh perayu, maka beliau sepatutnya mengenepikan sahaja pengakuan salah yang dibuat oleh responden kedua dan menggantikannya dengan pengakuan tidak bersalah dan seterusnya meremitkan kes tersebut kepada mahkamah majistret untuk perbicaraan semula. Oleh itu, (a) sabitan di bawah s 148 Kanun Keseksaan dan hukuman denda sebanyak RM2,100, gagal bayar tiga bulan penjara oleh mahkamah majistret adalah dihidupkan semula; dan (b) keputusan Mahkamah Tinggi mengenepikan sabitan dan hukuman yang dikenakan oleh mahkamah majistret dan menggantikannya dengan sabitan di bawah s 323 Kanun Keseksaan dan hukuman denda sebanyak RM1,500, gagal bayar dua bulan penjara adalah diketepikan (lihat perenggan 30).

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A [English summary]

The first and second the respondent together with their two friends had attacked the complainant using a plastic chair in a restaurant. As a result of the attack, three victims had suffered minor wounds and bruises on their bodies and hands. Due to this incident, the first and second respondent were arrested and charged in the magistrate's court under s 148 of the Penal Code read together with s 34 of the same Act. Both the respondents pleaded guilty, understand the nature and consequences of their pleas. After hearing mitigations and aggravating factors, the magistrate's court sentenced each respondent to a fine of RM2,100 in default three months' imprisonment for each respondents. Not satisfied by the decision, the prosecution appealed against the sentence. The High Court judge, exercising his power of review, ordered that the conviction and sentence imposed on the two respondents be reversed and substituted it with conviction on the amended charges under s 323 of the Penal Code. Both the respondents were fined RM1,500 each in default two months' imprisonment. Aggrieved by the decision, the prosecution filed a notice of appeal to the Court of Appeal on the entire High Court's decision. However, the notice of appeal against the first respondent was struck out due to the failure to serve the notice of appeal to the first respondent. Therefore, the appeal was only against the second respondent. The issues in the appeal were: (a) whether a plastic chair within the meaning of 'any weapon' for the purpose of an offence under s 148 of the Penal Code; (b) whether a High Court judge can invoke the power of review under s 323 of the Criminal Procedure Code to amend a conviction in a pleaded guilty case and further sentence the accused under the amended charge.

Held, allowing the appeal:

- (1) Even though the nature of the plastic chair was not in fact a weapon, the misuse of it could cause injury to anyone as in this case where the three victims were wounded and bruised as well as the pain was inflicted on their bodies as a result of being hit with the plastic chair. In this regard, it is clear that the plastic chair is within the meaning of 'weapons' for the purpose of this offence (see para 22).
- (2) The High Court has the power during the appel hearing to impose conviction and sentence for the charge under s 148 of the Penal Code after being satisfied that the facts of the case submitted by the appellant did not meet the elements of the charge. However, in exercising his power of review, the High Court judge cannot amend the original charge in previous section to a new charge in new section as what had been done in the case, let alone to record the conviction and sentence on the amended charge. This was because s 325 of the Criminal Procedure Code does not provide for the power to a judge on revision to do so (see paras 28–29).
- (3) Once the High Court judge found that the elements under s 148 of the

Penal Code has failed to be fulfilled by the appellant, he should have set aside the guilty plea made by the second respondent and replace it with a plea of not guilty and subsequently remit the case to the magistrate's court for retrial. Therefore, (a) the conviction under s 148 of the Penal Code and a fine of RM2,100, in default three months' imprisonment by the magistrate's court was affirmed; and (b) the High Court's decision to set aside the conviction and sentence imposed by the magistrate's court and substituted it with a conviction under s 323 of the Penal Code and a fine of RM1,500, in default two months' imprisonment was set aside (see para 30).]

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Kes-kes yang dirujuk

Deputy Public Prosecutor v Salamat bin Mangon [1946] 1 MLJ 155 (dirujuk)

Hajar bt Ishak v PP [2000] MLJU 367; [2000] 4 CLJ 46, MT (dirujuk)

Mohammad bin Hassan v PP [1998] 5 MLJ 65, MT (dirujuk)

Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 1 MLJ 645; (1995) 2 CLJ 209, MR (dirujuk)

Nor Azman bin Ghazali v PP [2013] 1 MLJ 486, MR (dirujuk)

PP v Mahathir bin Muhammad [2013] 1 MLJ 50, MR (dirujuk)

PP v Rahmat bin Ghazali & another appeal [2021] 3 MLJ 660, MR (dirujuk)

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Undang-undang yang dirujuk

Akta Bahan-Bahan Kakisan dan Letupan dan Senjata Berbahaya 1958 s 2

Akta Mahkamah Kehakiman 1964 s 50(2)

Kanun Keseksaan ss 34, 148, 323

Kanun Tatacara Jenayah ss 323, 323(1), 325

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Subash Ramasamy (Chee Hui Bing bersamanya) (Chand, Jag & Assoc) bagi pihak perayu.

Sarulatha a/p Paramavathar (Timbalan Pendakwa Raya, Jabatan Peguam Negara) bagi pihak responden.

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Azmi Ariffin HMR:

PERTUDUHAN

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[1] Responden pertama dan responden kedua telah dituduh di atas pertuduhan berikut:

Bahawa kamu bersama-sama yang telah dituduh pada 24/11/2019 jam lebih kurang 3.00 pagi bertempat di Restoran Nur Firdaus Taman Aman, Senai dalam Daerah Kulai di dalam Negeri Johar yang merupakan tempat awam telah terlibat dalam rusuhan sehingga mendatangkan kecederaan kepada Mohammad Azri bin Masuri No KP: 900602-01-5271, Mohamad Iskandar bin Muslih No KP: 961209-01-6891 dan Mohamad Hanafie bin Tawi No KP: 920325-01-6337

I

- A dengan menggunakan kerusi. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 148 Kanun Keseksaan dibaca bersama seksyen 34 kanun yang sama.

FAKTA KES SECARA RINGKAS

- B [2] Pada 24 November 2019 jam lebih kurang 3 pagi bertempat di Restoran Nur Firdaus Taman Aman, Senai, Kulai, Johor, kedua-dua responden bersama-sama tiga orang yang masih bebas telah menyerang dan merusuh di tempat kejadian. Responden pertama dan kedua bersama-sama dengan dua rakannya telah menyerang pengadu dengan menggunakan kerusi plastik yang berada di restoran tersebut.
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- D [3] Akibat serangan tersebut tiga orang mangsa iaitu Mohammad Azri bin Masuri, Mohamad Iskandar bin Muslih dan Mohamad Hanafie bin Tawi telah mengalami kecederaan luka kecil dan lebam di bahagian badan dan tangan.
- E [4] Bertindak di atas laporan polis yang dibuat, pada 25 November 2019 responden kedua telah ditangkap di Taman Senai Utama, Senai manakala responden pertama pula telah ditangkap pada 10 Ogos 2022 di Jalan Persiaran Teknologi, Taman Teknologi Senai, Johor.
- F [5] Pada 11 Ogos 2022, kedua-dua responden telah dituduh di Mahkamah Majistret Kulai, Johor di atas pertuduhan di bawah s 148 Kanun Keseksaan dibaca bersama s 34 Kanun yang sama.
- G [6] Pertuduhan telah dibacakan dan diterangkan kepada mereka di dalam Bahasa Malaysia. Kedua-dua responden mengaku salah, memahami sifat dan akibat pengakuan salah mereka. Fakta kes dan ekshibit yang dikemukakan turut diakui benar oleh mereka.
- H [7] Setelah mendengar rayuan peringanan dan pemberatan hukuman oleh kedua-dua pihak, mahkamah majisteret telah menjatuhkan hukuman denda RM2,100 jika ingkar bayar tiga bulan penjara bagi setiap responden.
- I [8] Tidak berpuas hati dengan keputusan tersebut, maka pada 14 Ogos 2022, perayu telah menfailkan notis rayuan (kandungan 37) di Mahkamah Tinggi Johor Bahru terhadap hukuman tersebut.
- [9] Hakim Mahkamah Tinggi yang bijaksana dengan menggunakan kuasa semakan telah memerintahkan agar sabitan dan hukuman yang dijatuhkan ke atas kedua-dua responden diakaskan dan digantikan dengan sabitan di atas pertuduhan pindaan di bawah s 323 Kanun Keseksaan. Kedua-dua responden

dikenakan hukuman denda setiap seorang RM1,500 jika gagal bayar bayar dua bulan penjara. A

[10] Terkilan dengan keputusan tersebut, pada 23 Februari 2023, perayu telah menfailkan notis rayuan terhadap kedua-dua responden di Mahkamah Rayuan di atas keseluruhan keputusan Mahkamah Tinggi tersebut. B

[11] Namun begitu, notis rayuan terhadap responden pertama telah dibatalkan pada 14 September 2023 kerana kegagalan perayu untuk menyerahkan notis rayuan tersebut kepada beliau. Oleh itu, rayuan di hadapan kami ini hanyalah terhadap responden kedua sahaja. C

PETISYEN RAYUAN

[12] Merujuk kepada rekod rayuan di kandungan 12, alasan-alasan rayuan yang terkandung di dalam petisyen rayuan perayu adalah seperti berikut: D

Selaras dengan seksyen 50(2) Akta Mahkamah Kehakiman 1964, soalan-soalan undang-undang berikut perlu diputuskan oleh Mahkamah ini adalah:

(1) Samada kerusi plastik termasuk dalam definisi ‘apa-apa senjata’ bagi maksud kesalahan di bawah seksyen 148 Kanun Keseksaan? E

(whether a plastic chair falls within the definition of any weapon as provided for an offence under section 148 of the Penal Code?)

(2) Dalam suatu rayuan oleh Pendakwa Raya terhadap hukuman yang amat berkurangan, samada Hakim Mahkamah Tinggi boleh mengguna pakai kuasa semakan di bawah seksyen 323 Kanun Tatacara Jenayah untuk meminda sabitan dalam suatu kes pengakuan bersalah dan selanjutnya menjatuhkan hukuman di bawah pertuduhan yang dipinda tersebut. F

(In an appeal by the Public Prosecutor against a manifestly inadequate sentence, can the High Court Judge exercise his power of revision under section 323 Criminal Procedure Code to amend a conviction in a plead guilty matter and proceed to sentence under the said amended charge?) G

Justeru, Peryu memohon Mahkamah Yang Mulia ini supaya mengeneipkan keseluruhan keputusan serta hukuman yang dijatuhkan oleh Yang Arif Mahkamah Tinggi dan selanjutnya memerintahkan rayuan Pendakwa Raya diremit kembali ke Mahkamah Tinggi untuk didengar semula di hadapan Yang Arif Hakim Mahkamah Tinggi yang lain atau apa-apa perintah lain sebagaimana yang difikirkan wajar dan adil oleh Mahkamah yang mulia ini. H

I

DAPATAN MAHKAMAH TINGGI

[13] Hakim Mahkamah Tinggi yang bijaksana di dalam alasan penghakimannya memutuskan seperti berikut:

- A** [9] TPR yang terpelajar dalam hujahan bertulis/lisan menegaskan hukuman denda yang dijatuhi ke atas responden-responden tidak memadai. Puan Majistret itu terkhilaf apabila gagal menimbangkan kesalahan yang dilakukan oleh responden-responden di tempat awam dan memerlukan hukuman yang berbentuk deteran. TPR yang terpelajar turut merujuk kes *Goh Bok Seng v Public Prosecutor* [1965] 2 MLJ 66 di mana bagi kesalahan yang sama, tertuduh dijatuhi hukuman penjara tiga bulan.
- B**
- C** [10] Sebaliknya peguam responden-responden menghujahkan Puan Majistret itu telah menggunakan budibicara yang betul semasa menjatuhi hukuman denda RM2,100 jika ingkar bayar tiga bulan penjara. Puan Majistret itu telah menimbangkan pengakuan bersalah responden-responden dan kesalahan pertama responden-responden. Peguam responden-responden turut menghujahkan s 148 Kanun itu memperuntukkan hukuman penjara atau denda atau kedua-duanya. Puan Majistret itu telah memilih hukuman denda dijatuhi ke atas responden-responden. Selanjutnya dihujahkan hukuman penjara bagi kesalahan s 148 Kanun itu bukannya mandatori.
- D** [11] Sebelum mahkamah ini menyentuh isu hukuman dengan lebih lanjut, mahkamah ini semasa mendengar rayuan ini turut menggunakan kuasa semakan yang diperuntukkan di bawah s 323(1) Kanun Tatacara Jenayah. Sebelum mahkamah ini menyentuh dengan lebih lanjut, eloklah diperturunkan peruntukan s 148 Kanun itu yang berbunyi seperti berikut:
- E** Any person who attends, takes part in or is found at any riot and who in his possession at such riot any firearm, ammunition, explosive, corrosive, injurious or obnoxious substance, stick, stone or any weapon or missile capable of use as a weapon of offence shall be punished with imprisonment for a term which may extend to five years or with fine or with both.
- F**
- G** [12] Berbalik kepada kes responden-responden, fakta kes yang dibentangkan oleh pendakwaan [P1] menunjukkan responden-responden menggunakan kerusi plastik yang berada di dalam restoran tersebut. Persoalannya sama ada 'kerusi plastik' termasuk dalam 'any weapon' bagi maksud peruntukan s 148 Kanun itu? Bagi merungkai isu ini, eloklah dirujuk prinsip ejusdem generis bagi menentukan adakah 'kerusi plastik' termasuk dalam 'any weapon' dan sama jenis dengan 'stick' atau 'stone'?
- H** [13] Mahkamah ini merujuk dictum oleh Lord Campbell dalam kes *R v Edmundson* (1859) 28 LJM C 213 di ms 215, Lord Campbell ada menzahirkan pandangannya berkaitan prinsip ejusdem generis seperti berikut:
- I** I accede to the principle laid down ... that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.
- [14] Mahkamah ini turut merujuk kes *Mohd Rosli Ani v Pengerusi, Lembaga Pencegahan Jenayah & Ors* [2021] 1 LNS 676 di mana YA Collin Lawrence Sequerah H (pada ketika itu) berpendapat:
- [76] The ejusdem generis rule is that where general words follow specific words, such general words take their meaning from the specific words and the meaning of the general words is restricted to the same genus as the specific words. See

Jambatan Merah Sdn Bhd v Public Bank Berhad [2015] MLJU 1208; [2014] 1 LNS 1657.

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[15] Berbekalkan prinsip-prinsip yang digariskan dalam nas-nas duluan yang dirujuk, mahkamah ini berpendapat 'any weapon' bagi maksud peruntukan s 148 Kanun itu perlulah merujuk kepada 'stick' atau 'stone'. Sehubungan itu kerusi plastik tidak sama jenis dengan 'stick' atau 'stone'. Kerusi plastik sifatnya merupakan perabot untuk tempat duduk. Kerusi plastik yang sedia ada digunakan untuk pengunjung restoran duduk sambil menikmati juadah yang dihidangkan. mahkamah ini berpendapat kerusi plastik yang sempurna tidak termasuk dalam 'any weapon' dan menyamai 'stick' atau 'stone'. Mahkamah ini berpendapat perbuatan responden-responden mencederakan menggunakan kerusi plastik yang sempurna sifatnya tidak termasuk dalam kesalahan s 148 Kanun itu.

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[16] Walaupun begitu, mahkamah ini mengakaskan sabitan dan hukuman ke atas responden-responden atas kesalahan s 148 Kanun itu dan memindanya kepada pertuduhan pindaan iaitu mendatangkan cedera ke atas mangsa iaitu Mohammad Azri bin Masuri, Mohamad Iskandar bin Muslih dan Mohamad Hanafie bin Tawi iaitu kesalahan di bawah s 323 Kanun itu.

D

[17] Mahkamah ini menjatuhkan hukuman denda RM1,500 setiap responden dan jika ingkar bayar dua bulan penjara. Lebihan denda (jika ada) yang telah dibayar dikembalikan semula kepada responden-responden.

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[18] Berdasarkan alasan-alasan yang diperincikan di atas, sabitan responden-responden atas kesalahan s 148 Kanun itu diketepikan dan digantikan dengan sabitan di bawah s 323 Kanun itu. Setiap responden dijatuhkan hukuman denda RM1,500 tidak bayar dua bulan penjara. Rayuan hukuman oleh TPR yang terpelajar menjadi akademik sebaik kuasa semakan di bawah s 323 KTJ digunakan.

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PRINSIP UNDANG-UNDANG BERKAITAN KEBENARAN UNTUK MERAYU

[14] Undang-undang adalah mantap bahawa bagi kes yang berasal daripada mahkamah majistret, mana-mana pihak yang ingin membuat rayuan kepada Mahkamah Rayuan perlu terlebih dahulu memperolehi kebenaran mahkamah ini. Rayuan hanyalah terhad kepada persoalan undang-undang sahaja. Ini adalah selaras dengan kehendak peruntukan s 50(2) Akta Mahkamah Kehakiman 1964.

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[15] Prinsip undang-undang berkaitan perkara ini telah dijelaskan di dalam kes *Public Prosecutor v Rahmat bin Ghazali & another appeal* [2021] 3 MLJ 660 di mana Mahkamah Rayuan menyatakan seperti berikut:

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[9] Section 50 gives jurisdiction to the Court of Appeal to hear appeals from criminal matters decided in the High Court and it includes appeals from sessions court and magistrates courts. However, s 50(2) provides a limitation to the manner that appeals emanates from magistrates court are brought to the Court of Appeal. It must be noted that s 50(2) provides generally and without qualification that 'an

A appeal shall lie to the Court of Appeal, with leave of the Court of Appeal'. It also enacts that 'such appeal' shall only be confined to question of law.

[16] Di dalam kes *Nor Azman bin Ghazali v Public Prosecutor* [2013] 1 MLJ 486, Mahkamah Rayuan menyatakan seperti berikut:

B [12] From the express wording of s 50 and in particular to sub-s (2) thereof, for the Court of Appeal to be conferred jurisdiction two pre-conditions must be fulfilled by the applicant, namely:

C (a) a leave application must be filed within 14 days from the date of the High Court decision; and

(b) it must be shown in the leave application the question of law which arose in the course of the appeal and the determination of which by the High Court has affected the event of the appeal.

D [13] The pre-requisites aforesaid was lucidly explained by Lamin Mohd Yunus PCA in *Public Prosecutor v Pasupathy s/o Kanagasaby* [2001] 2 MLJ 143; [2001] 2 CLJ 753 where he said:

E When an accused person desires to appeal, the full force of sub-s (2) comes into play. He has to apply for 'leave' and that his appeal must be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

F [17] The crucial element of 'question of law' must in our view relates to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of facts which require references to facts and evidence and the inferences drawn from the facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.

G [17] Di dalam kes *Public Prosecutor v Mahathir bin Muhammad* [2013] 1 MLJ 50, Mahkamah Rayuan melalui penghakiman yang disampaikan oleh Mohd Hishamudin HMR (beliau pada ketika itu) menyatakan seperti berikut:

H [20] The rationale for limiting the appeal to question of law only is not difficult to appreciate. The cases that emanate from the magistrate's courts are relatively less serious in nature as compared to cases dealt with by the session courts, and in most cases they involve only finding of facts. Hence, there is very minimal risk of real injustice if further appeals to the Court of Appeal should only be confined to questions of law.

KEPUTUSAN KAMI

I [18] Hanya terdapat dua persoalan undang-undang yang harus kami dimuktamadkan.

Persoalan pertama: Sama ada kerusi plastik termasuk dalam defnisi 'apa-apa

senjata' bagi maksud kesalahan di bawah s 148 Kanun Keseksaan

A

[19] Tiada tasiran spesifik yang diberikan mengenai perkataan 'senjata/weapon' di dalam Kanun Keseksaan. Seksyen 2 Akta Bahan-Bahan Kakisan dan Letupan dan Senjata Berbahaya 1958 hanya mendefinisikan 'offensive weapon' dan 'scheduled weapon' sahaja sepertimana berikut:

B

... 2. In this Act, unless the context otherwise requires:

'offensive weapon' includes any instrument which if used as a weapon of offence is likely to cause hurt;

C

'scheduled weapon', 'means any offensive weapon specified in the Second Schedule'.

Berikut diperturunkan Jadual Kedua tersebut:

[Sections 2 and 12]

1. Any knife, sometimes known as a 'flick knife', which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.
2. Any knife, sometimes known as a 'gravity knife', which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device.
3. Any whip manufactured from bicycle or motor cycle chains, or from any similar kind of chain work.
4. All kinds of knuckleduster.
5. Any blade or other instrument attached to or forming part of a bicycle pump, metal-pipe or stick, and concealed therein, which is capable of being used for cutting or stabbing.
6. Any knife-like instrument with three sharp edges and a sharp pointed tip, sometimes known as a 'bearing-scraper'.
7. Any small axe normally used as a weapon and commonly known as 'kapak kecil'.
8. Any sword, keris, parang or other knife which on any part of it is written, embossed, inscribed with or which otherwise bears any verse, word or character connected with or relating to any religion or belief.
9. Any sword or parang which is normally meant to be used as a weapon and not as an agricultural implement or household or garden tool.
10. Any spear or spearhead.
11. Any cross bow.
12. Any Patrolite, Stun Gun, Taser, Control Club or any such similar instrument, device or equipment operated by battery or electricity or any form or power.

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A [20] Bagi merungkai kekeliruan samada kerusi plastik adalah satu senjata ataupun tidak, maka rujukan sewajarnya dibuat kepada kes *Deputy Public Prosecutor v Salamat bin Mangon* [1946] 1 MLJ 155 di mana Murray Aynsley CJ (Singapura) menjelaskan persoalan ini seperti berikut:

B This gave rise to the question as to whether an offence had been committed. The meaning of the words 'offensive weapon' occurs in several Acts of Parliament as well as in local legislation and they give rise to difficulties in interpretation. There may be said to be two schools of thought. One school regards merely the primary purpose of the weapon used and, if that is not offensive, holds that it is not within the section. In this sense are the case of *George Cosans* [1785] 1 Leach 342; 168 ER 274 and the recent FMS case of *Sarban Singh* [1941] 10 MLJ 210.

C *On the other hand, in the case of James Johnson* [1822], *Russ & Ry* 493; 168 ER 914, where the accused had used what appeared to be a common walking stick, the judge directed the jury that if the accused had used his stick by way of attack for the purpose of effecting a robbery it might be considered as an offensive weapon. In my opinion this is the correct view. Whether a weapon is offensive or not is a question of fact depending on the circumstances of each particular case. Many things such as razors, parangs and pick handles have their legitimate and pacific uses but circumstances may show that that was not the use which the accused had in mind at the material time. For instance, where a man is found prowling round at night with a razor concealed in his sock or a parang about his person. (Penekanan ditambah.)

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[21] Berdasarkan kepada otoriti di atas, adalah jelas bahawa 'what constitute weapon depends not on the nature of its legitimate usage, but on its capacity, given manner of its use, to endanger life or inflict great body harm'. Dengan kata lain, walaupun sifat kerusi plastik pada hakikatnya bukan lah sejenis senjata, namun jika disalahgunakan ianya boleh mendatangkan kecederaan kepada sesiapa sahaja sepertimana yang berlaku di dalam kes ini di mana ketiga-tiga mangsa telah mengalami kecederaan luka dan lebam serta kesakitan pada tubuh badan mereka akibat daripada pukulan dengan kerusi plastik tersebut. Sehubungan dengan itu, tidak dapat disangkal lagi bahawa kerusi plastik yang digunakan ini termasuk di dalam kategori 'senjata' bagi maksud kesalahan ini.

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H *Persoalan kedua: Dalam suatu rayuan oleh pendakwa raya terhadap hukuman yang amat berkurangan, samada hakim Mahkamah Tinggi boleh mengguna pakai kuasa semakan di bawah s 323 Kanun Tatacara Jenayah untuk meminda sabitan dalam suatu kes pengakuan bersalah dan selanjutnya menjatuhkan hukuman di bawah pertuduhan yang dipinda tersebut*

I [22] Pada hemat kami, Mahkamah Tinggi sebagai mahkamah rayuan berhak di sisi undang-undang untuk melaksanakan kuasa semakan di bawah s 323(1) Kanun Tatacara Jenayah *for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate court.*

[23] Pandangan kami ini berpaksikan kepada beberapa keputusan kes yang telah diputuskan. Di antaranya adalah seperti berikut:

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[24] Di dalam kes *Hajar bt Ishak v Public Prosecutor* [2000] MLJU 367; [2000] 4 CLJ 46, Zainun Ali J (beliau pada ketika itu) memutuskan seperti berikut:

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Section 305 CPC provides that a person who has been convicted on his plea of guilty is entitled to appeal only against the extent or legality of his sentence. However, the court is entitled to, and will where appropriate, act in revision and set aside the conviction. In the instant appeal, upon revision, the proper order for the court to make would be to set aside the plea of guilty and substitute it with a plea of not guilty and send the case back to the trial court (*Public Prosecutor v Mohamed Termizi*).

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Thus, after considering the various issues involved in this appeal, and upon considering the submissions of both the learned DPP and counsel for the appellant, this court finds that there are grounds to act in revision and accordingly quash the conviction and sentence and remit the case to be retried before another sessions court.

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[25] Di dalam kes kami merujuk kepada kes *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645; [1995] 2 CLJ 209, di mana Mahkamah Rayuan memutuskan seperti berikut:

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I begin by recognising that under s 305 of the Code, a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. However, once such an appeal has been lodged, there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the judge hearing the case to act in revision. Of course the appellant in such a case ought, wherever possible, to give the court and the public prosecutor adequate notice of this, setting out the grounds on which the revision will be sought. A court hearing an appeal against sentence is entitled to and will where appropriate, act in revision and set aside a conviction. The Malayan Law Journal is replete with pronouncements that support this proposition and I need only mention the decisions in *Low Hiong Boon v Public Prosecutor* (1948-49) MLJ Supp 135 and *Tang Kee Chie v Public Prosecutor* (1987) 430 as illustrations of the principle. Reference may also be usefully had to the remarks of Thomson CJ in *Ho Kin Luan v Public Prosecutor* [1959] MLJ 159 at p 161; [1959] 1 LNS 33.

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In *Tang Kee Chie*, Chong Siew Fai J (now FCJ) stated the principle in the following words:

Learned Counsel for the prosecution, obviously with s 305 of the Criminal Procedure Code and/or s 50(2) of the Courts of Judicature Act, 1964 in mind, submitted that since the appellant had pleaded guilty and was convicted on such plea, there could be no appeal against conviction. I need only refer to the following cases to illustrate that convictions were set aside where the accused persons were convicted on their own plea of guilty. *Heng Kim Khoon v Public Prosecutor*, *Subramaniam & Anor v Public Prosecutor*. If the facts disclosed in a

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- A case show the absence of an essential ingredient constituting the alleged offence such that no court would have convicted the accused, the conviction and sentence will be set aside. Even if there is no a right of appeal, this court as the appellate court is entitled to look into the record and exercise its power of revision if the record shows that a failure of justice had occasioned.
- B In *Manokaran v Public Prosecutor* [1979] 1 MLJ 262, Abdoolcader J (as he then was) dealt with the revisionary power in the following way:
- C I have however not only extensive powers of revision in criminal proceedings under the provisions of s 325 of the Criminal Procedure Code but even wider powers conferred by s 35 of the Courts of Judicature Act 1964, and the deputy public prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my power of revision if the circumstances of the case so warrant. I would merely add that in my view notwithstanding the provisions of s 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law, in which event the conviction itself would be illegal and a nullity. It is true that the matters complained of in this appeal have been brought to my notice by way of a record of appeal and the proceedings before me are headed in the criminal appeal, but, as I pointed out to,
- D counsel on both sides of the outset of this hearing, it is nevertheless open to me notwithstanding this to exercise my powers of revision in this matter, and I referred in this regard to the decision of the Privy Council in *In re Chunbidya & Ors* to the effect that *when the High Court has before it on appeal a record of criminal proceedings, it can proceed to exercise its powers of revision if it chooses to do so and make the requisite order* although precluded by another provision in the Criminal Procedure Code from doing so in the appeal. (Emphasis added.)
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[26] Rujukan juga dibuat kepada kes *Mohammad bin Hassan v Public Prosecutor* [1998] 5 MLJ 65, di mana Augustine Paul JC (beliau pada ketika itu) menyatakan seperti berikut:

- G The accused pleaded guilty before the magistrate's court at Jasin, Melaka on account of possessing and with intention to sell an admission permit which was found to be a forged permit an offence under s 56(1A)(b) of the Immigration Act 1959/63 ('the Act') and he was imposed a sentence of one year's imprisonment under s 57 of the Act. It was uncertain whether the accused admitted the facts as contained in the summary of the facts of the case ('exh P2'). There was no record to show that the facts were explained to the accused. It was also not shown in the record that the guilty plea of the accused was accepted by the learned magistrate. The accused appealed against the sentence.
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- I In considering the proper order to be made, I bear in mind s 305 of the CPC which provides that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence. However, once such an appeal has been lodged there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision

and set aside a conviction (see *Lee Yu Fah & Ors v PP* and *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645; (1995) 2 CLJ 209 (CA)). Upon revision, the proper order for the High Court to make is to set aside the plea of guilty and substitute it with a plea of not guilty and send the case back to the trial court (see *Public Prosecutor v Mohamed Termizi*).

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In the upshot, I set aside the plea of guilty of the accused in the exercise of my powers of revision and substitute it with plea of not guilty and remit the case back to the magistrate's court at Jasin for trial.

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[27] Berdasarkan kepada nas undang-undang di atas, kami dapati hakim Mahkamah Tinggi yang bijaksana mempunyai kuasa di peringkat pendengaran rayuan untuk mengkas sabitan dan hukuman bagi pertuduhan di bawah s 148 Kanun Keseksaan setelah beliau berpuas hati bahawa fakta kes yang dikemukakan oleh perayu tidak memenuhi inti pati pertuduhan.

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[28] Biar pun begitu, di dalam melaksanakan kuasa semakannya, hakim Mahkamah Tinggi yang bijaksana tidak boleh meminda seksyen pertuduhan asal kepada seksyen pertuduhan yang baru seperti yang telah dilakukan oleh beliau, apatah lagi untuk merekodkan sabitan dan hukuman di atas pertuduhan pindaan tersebut. Ini adalah kerana s 325 Kanun Tatacara Jenayah tidak memperuntukkan kuasa kepada seseorang hakim atas penyemakan untuk berbuat demikian.

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[29] Pada hemat kami, setelah hakim Mahkamah Tinggi yang bijaksana mendapati bahawa elemen di bawah s 148 Kanun Keseksaan gagal dipenuhi oleh perayu, maka beliau sepatutnya mengeneipkan sahaja pengakuan salah yang dibuat oleh responden kedua dan menggantikannya dengan pengakuan tidak bersalah dan seterusnya meremitkan kes tersebut kepada Mahkamah Majistret Kulai, Johor untuk perbicaraan semula.

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KESIMPULAN

- (a) berdasarkan kepada alasan-alasan di atas, kami dapati terdapat persoalan undang-undang yang berbangkit daripada dua persoalan yang dikemukakan oleh perayu ini. Kami sebulat suara membenarkan rayuan perayu;
- (b) sabitan dibawah s 148 Kanun Keseksaan dan hukuman denda sebanyak RM2,100, gagal bayar tiga bulan penjara oleh Mahkamah Majistret Kulai, Johor adalah dihidupkan semula; dan
- (c) keputusan Mahkamah Tinggi mengeneipkan sabitan dan hukuman yang dikenakan oleh Mahkamah Majistret dan menggantikannya dengan sabitan di bawah s 323 Kanun Keseksaan dan hukuman denda sebanyak RM1,500, gagal bayar dua bulan penjara adalah diketepikan.

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A Rayuan dibenarkan.

Dilaporkan oleh Kahvita Selvaraju

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